Case Summary

Complaint against Drainage Services Department, Home Affairs Department and Lands Department for dodging responsibility to repair a damaged stream bank /retaining wall adjacent to a house.

The Complaint

The complainant complained against the Drainage Services Department (DSD), Home Affairs Department (HAD) and Lands Department (Lands D) for dodging their responsibilities to repair a damaged stream bank/retaining wall adjacent to his house.

Sequence of Events

2. As the stream bank adjacent to his house had been seriously eroded, the complainant lodged a verbal complaint with DSD in June 2000. Following a site inspection, DSD informed the complainant that his request had been referred to the District Office of HAD (DO) for action. DO objected to taking up the repair works because its Local Public Works funds could not be used for the benefit of individuals. In October 2000, DO informed him that no repair works would be conducted as no public facilities were affected.

3. DSD maintained that DO had a responsibility for the maintenance of natural watercourses under a Technical Circular (WBTC 8/2000). Between June 2000 to June 2001 a year-long argument between DSD and the DO took place. It was not until November 2000 that DO checked with the District Lands Office (DLO) of Lands D the ownership of the lot. In April 2001, DO asked DLO if the licensee of the lot had responsibility for repairing the stream bank. DLO carried out a site inspection and replied in May 2001 that information relating to the maintenance responsibility was not available. In June 2001, DO asked DLO to liaise with the licensee of the site to strengthen the foundation of the retaining wall (the location in question was initially described as “a stream bank”, then in mid-2001 as “a retaining wall”). DLO marked the file for action in three months to await the outcome of the debate between DO and DSD.

4. As a result of DO’s repeated requests, DLO carried out another site inspection in August 2001. In October 2001, DLO informed DO that the licensee was normally responsible for the maintenance works, but it would consult the Geotechnical Engineering Office (GEO) of Civil Engineering Department about the need for urgent repairs. In November 2001, GEO confirmed that the retaining wall needed urgent repairs and that Lands D (not the licensee) should

be responsible for its maintenance according to the Slope Maintenance Responsibility Information System (under the regime of another Technical Circular). Repair of the retaining wall was eventually completed by early March 2002.

Our Observations

5. Although there was no evidence of wilful or deliberate disregard of duties, The Ombudsman was disappointed by the departments' compartmental mentality in processing this case. The three departments separately conducted five site inspections from June 2000 to August 2001. Surprisingly, no inter-departmental joint inspection or meeting was ever conducted to achieve early resolution. Each department was concerned only with its own interests and did not take a broader outlook or a more proactive and concerted approach. As a result, it took 17 months for Government to establish the responsibility for maintenance of the retaining wall.

6. Furthermore, this case has illustrated that the WBTC 8/2000 is not working as intended. Recurrence of dispute between DSD and HAD cannot be ruled out.

Conclusion and Recommendations

7. Against this background, The Ombudsman finds the complaint **partially substantiated** against DSD, HAD and Lands D.

8. Our seven recommendations include suggestions that the three departments review their procedures for dealing with complaints involving more than one department; consider checking land status, arranging joint inspections and meetings early; staff should adopt a vigilant, positive and proactive attitude in processing complaints and enquiries from the public and other departments. In addition, the departments concerned should clarify, in conjunction with the policy bureau, the maintenance responsibility of natural watercourses to prevent recurrence of the dispute.

Comments from DSD

9. Whilst appreciating the complainant's frustration, DSD commented that a joint site inspection might not resolve DO's concern over funding or in identifying the party responsible for maintenance, i.e. Lands D in the case. Requiring the department being the first port of call to perform a thorough land status check before referral to the responsible department would delay the proper response to a complaint.

Comments from HAD

10. HAD agreed with the recommendations relating to it and would work with the relevant departments/policy bureau to implement the recommendations early.

Comments from Lands D

11. Lands D reiterated that DLO did not have a clear picture of the matters involved until mid-2001. Either DSD or DO could have assumed the initial coordinating role in this issue.

Final Remarks

12. Though DSD had followed the procedures laid down in WBTC 8/2000, it was found to be not applicable only after a lapse of 17 months. Had the land status been checked at the outset, Lands D would have been involved and the complaint resolved much earlier. On the other hand, if DLO had taken some initiative to check the maintenance responsibility and sought the advice of GEO promptly, the repair works could have been carried out sooner.

13. This case has shown that there is need to review the procedures on checking land status and slope records at an early stage of processing such complaints. The departments concerned just fell short of taking a step further in the interest of the complainant.

14. The Ombudsman decided that the conclusion and recommendations of the report should stand.

Office of The Ombudsman
Ref. OMB2001/3407-8 & 2002/0472
27 March 2003